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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 651 (LTS)

5 NIKOLAOS LIMBERATOS,

6 Defendant.

Telephone Conference

7 -----x
8 New York, N.Y.
9 April 8, 2020
2:30 p.m.

10 Before:

11 HON. LAURA TAYLOR SWAIN,

12 District Judge

13 APPEARANCES

14 GEOFFREY S. BERMAN,
15 United States Attorney for the
Southern District of New York
16 ROBERT SOBELMAN
SAMUEL P. ROTHSCHILD
17 Assistant United States Attorneys

18 KARLOFF C. COMMISSIONG
19 Attorney for Defendant

20
21 ALSO PRESENT: LEA HARMON, Pretrial Services
22
23
24
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(The Court and all parties appearing telephonically)

(Case called)

THE COURT: Good afternoon.

First, I would like to confirm that the court reporter, Ms. Giniger, is on the line.

THE REPORTER: Yes, I am.

THE COURT: Now, would the assistant United States attorneys state their appearances, please.

MR. SOBELMAN: Robert Sobelman for the United States. I am joined on this call by Samuel Rothschild, another assistant US attorney in our office, and Taylor Tescher, an intern in our office. Good afternoon, your Honor.

THE COURT: Good afternoon, Messrs. Sobelman and Rothschild.

And Ms. Tescher, I believe it is. Good afternoon.

Would defense counsel please state his appearance.

MR. COMMISSIONG: On behalf of Mr. Limberatos, Karloff Commissiong. Good afternoon, your Honor.

THE COURT: Good afternoon, Mr. Commissiong.

And would the pretrial services officer please state her appearance.

MS. HARMON: Good afternoon, your Honor. Lea Harmon.

THE COURT: Good afternoon, Ms. Harmon.

Is anyone else other than court personnel on the line?

All right. I would just ask that all participants

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1 mute when you don't expect to be speaking for a period of time.
2 And I remind everyone that neither recording nor retransmission
3 of this proceeding is permitted.

4 A bit about logistics. I will be calling on each
5 speaker during the proceeding. When I do, please identify
6 yourself by name for clarity of the record. And please don't
7 interrupt each other or me during the conference. If we
8 interrupt each other, it's difficult to create an accurate
9 transcript of these proceedings. Having said that, I apologize
10 in advance because I may interrupt when I have questions, and
11 thank you for bearing with that. I will give each of the
12 attorneys an opportunity to make additional comments or ask
13 questions at the end of the proceeding. If anyone has any
14 difficulty hearing me or another participant, please let me
15 know right away.

16 We are in the midst of the COVID-19 pandemic. I am
17 conducting this application for bail review and/or temporary
18 release telephonically pursuant to the authority provided by
19 Section 15002 of the CARES Act and the standing orders issued
20 by our chief judge pursuant to that act. Videoconferencing is
21 not reasonably available for today's proceeding.

22 Counsel are appearing by telephone and Mr. Limberatos
23 is not here and is not participating. Mr. Commissiong filed
24 docket entry number 229 yesterday, a letter in which he states
25 that Mr. Limberatos consents to the telephonic proceeding and

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1 waives his personal appearance.

2 Mr. Commissiong, would you please give us a little bit
3 more context by way of explanation of what you discussed with
4 Mr. Limberatos in terms of his rights and the basis of your
5 understanding as to whether his consent is knowing and
6 voluntary and whether it would have been feasible to get that
7 consent in writing from him.

8 MR. COMMISSIONG: Yes, your Honor, certainly.

9 I had a conversation with Mr. Limberatos yesterday
10 afternoon. He was released, as everyone is aware. The MCC is
11 currently on a two-week lockdown. Mr. Limberatos was released
12 with three or four other inmates briefly in order to make a
13 phone call from the counselor's office, and during that phone
14 call I explained to him that the hearing in which I put forth
15 the bail application was going to be heard, was scheduled to be
16 heard today. I explained to him that it was scheduled to take
17 place telephonically and that I needed his consent in order to
18 have the proceeding take place telephonically, and I also
19 needed his consent -- and I attempted to explain in the
20 simplest way possible. I explained to him that I needed his
21 consent so that he wouldn't need to appear, because
22 logistically it's just not feasible for him to appear at this
23 proceeding. He explained that he understood and that he
24 consented to both not being present at the hearing and having
25 the proceeding occur telephonically.

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1 THE COURT: So are you persuaded that he did
2 understand and that his consent is knowing and voluntary?

3 MR. COMMISSIONG: Absolutely.

4 THE COURT: I find based on Mr. Commissiong's
5 explanation and representation that Mr. Limberatos's waiver is
6 knowing and voluntary, and that in light of the circumstances
7 at the MCC, the telephonic communication was the feasible way
8 of obtaining that indication of consent and written consent was
9 not feasible in the circumstances.

10 Thank you, Mr. Commissiong.

11 Mr. Limberatos is currently detained pursuant to the
12 Court's October 25, 2019 order, and he seeks reopening of that
13 detention hearing and release on conditions under Section
14 3142(f) of Title 18 or temporary release on conditions under
15 Section 3142(i) of Title 18.

16 I have received and reviewed the pretrial services
17 report, which is dated October 10, 2019; the submissions from
18 defense counsel, dated March 27, 2020, April 2, 2020, and April
19 7, 2020; and the government's submission, dated April 1, 2020.

20 Are there any other written submissions that the
21 parties intend me to have considered in connection with this
22 proceeding?

23 MR. SOBELMAN: No, your Honor.

24 MR. COMMISSIONG: Nothing for the defense, your Honor.

25 THE COURT: Thank you.

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1 So at this point, Mr. Commissiong, I would invite you
2 to make your application for reopening and for temporary
3 release.

4 MR. COMMISSIONG: Thank you, your Honor.

5 I think that everything that I wanted to communicate
6 to the Court regarding this issue I have detailed in both
7 submissions, but I would like the Court to focus on just a
8 couple of things.

9 First, I would like the Court to focus on the
10 unsanitary conditions in MCC and in BOP facilities in general.
11 During normal times, the pre-coronavirus period, conditions at
12 the MCC, MDC, other BOP facilities are, at best, unsanitary,
13 for lack of a better word. Those unsanitary conditions,
14 combined with the lack of space, combined with the number of
15 individuals at the MCC, make this a Petri dish for the spread
16 of the coronavirus; it makes it a Petri dish for the spread of
17 the disease COVID-19.

18 Since the lockdown that has occurred in connection
19 with one or a few of the individuals testing positive at MCC,
20 inmates at MCC have been quarantined to their cells with their
21 bunkmates, because there are two individuals to a cell, and
22 recently they were released in their tiers. Mr. Limberatos
23 explained to me that when the individuals go out to their
24 tiers, it's sort of business as usual, so to speak, people move
25 around like they would during normal times, which would aid in

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1 transmission of COVID-19 if someone would have it. But we
2 don't know who has it and who doesn't many times because the
3 disease spreads among people who are asymptomatic.

4 I would like the Court to focus on the fact that the
5 BOP is not actively testing people. They may be taking
6 people's temperatures, people who appear symptomatic, but they
7 are not actively testing members of the population; they are
8 not actively testing inmates. And if we don't test, we don't
9 know; if we don't test, we can't know, your Honor, who has the
10 disease and who doesn't.

11 So, essentially, BOP staff are waiting for people to
12 cough, are waiting for people to complain of chest pain, are
13 waiting for people to have fevers. They are waiting for people
14 to become symptomatic before they quarantine individuals,
15 before they send people out to get tested. And when they bring
16 those individuals back, in many instances they are putting them
17 in the same unit they came from until those test results
18 arrive. And I think I put in my most recent submission that
19 that was done with at least one or two individuals in 11 South,
20 which is directly across from 11 North where Mr. Limberatos is,
21 the unit Mr. Limberatos is in.

22 I would like the Court to also focus on the difficulty
23 that I had in contacting -- and this goes to the Sixth
24 Amendment issue that I raised. I would like the Court to focus
25 on the difficulty that I had in arranging a phone call with Mr.

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1 Limberatos, and it was a brief phone call, and it could only be
2 a brief phone call because there were other people waiting on
3 line for the phone at the counselor's office. There were at
4 least two e-mails in connection with your Honor's order sent to
5 MCC Legal in order to schedule a phone call with Mr.
6 Limberatos, AUSA Sobelman sent an e-mail communicating with MCC
7 Legal, and MCC Legal never contacted me in connection with
8 scheduling a call.

9 In terms of being able to discuss this case, at the
10 very least talking about discovery that I have seen, discovery
11 that he has seen, these logistics make it impossible to prepare
12 any kind of defense. And while there is no trial scheduled or
13 no hearing scheduled, it makes it inordinately difficult to
14 schedule a hearing, it makes it inordinately difficult to
15 schedule a trial; it makes it difficult to prepare a defense.

16 The fact that inmates are on a lockdown and they don't
17 know when they will be released, and when they are released
18 they are released for only a brief period of time, either to go
19 on computers that we don't believe are wiped clean in any way,
20 or go on phones that we don't believe are wiped clean in any
21 way, or to take a shower that everyone in the tier -- one
22 shower or two showers that everyone in the tier has to use,
23 they are released for a brief period of time, and that's not
24 enough time to review discovery, your Honor. Logistically,
25 these circumstances will prevent or hinder Mr. Limberatos's

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1 Sixth Amendment rights. It will prevent us from preparing an
2 adequate defense.

3 I will also sort of segue back into the conditions in
4 the BOP. If inmates are being released every three days, or
5 every four days, while in lockdown, they are being released
6 into a common area in the tier, then the purpose of the
7 quarantine in the first place is sort of thwarted. Because,
8 again, you don't know whether the people showing no symptoms
9 are actually people who are infected by the virus but are
10 asymptomatic, and you don't know whether they are spreading it
11 in the common area, you don't know whether they are spreading
12 it in the lounge areas, you don't know whether they are
13 spreading it in the shower. You just don't know. It makes the
14 conditions at the MCC precarious.

15 And again, Mr. Limberatos is 54 years old, and while
16 the government pointed out in their submission that the CDC
17 says individuals, in terms of age, individuals 65 are more
18 susceptible to severe illness, the New York City Health
19 Department, I pointed out, states that people over 50 are
20 susceptible to severe illness. And while those are
21 contradictory statements, I would stress that we are in an era
22 where information is developing on a daily basis, on an hourly
23 basis, research is continuing as we speak, and we have got to
24 go on the best knowledge that we have; and if the New York City
25 Health Department feels confident enough to put out that people

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1 over 50 have to take extra precautions and people over 50 are
2 susceptible to severe illness, I think that that is something
3 that we have to pay attention to when deciding this issue.

4 Just as a matter of logistics, should your Honor
5 temporarily release him, or release him for the extent of the
6 pretrial period, he would either be staying with the mother of
7 his children, Ms. Flora Perrada, at 25 Wellington Avenue, Deer
8 Park, New York 11729, or at a house owned by his brother,
9 Athanasios Lymberatos. Lymberatos is spelled with a "Y" with
10 respect to his brother's name. The address is 29-44 164th
11 Street, Flushing, New York -- I'm sorry, your Honor, I just
12 gave you the wrong address where he would be staying. It's
13 46-34 202nd Street, Bayside, New York 11361. And he would be
14 staying at that address with his niece, his brother's daughter,
15 Angeliki Lymberatos.

16 I have nothing further at this moment, your Honor.

17 THE COURT: Thank you.

18 I will turn to Mr. Sobelman for his remarks, please.

19 MR. SOBELMAN: Yes, your Honor.

20 I will be brief because I think we responded to most
21 of these points in our detailed letter. But, of course, we are
22 able to answer any questions the Court may have after I
23 conclude.

24 To respond to Mr. Commissiong, with respect to his
25 claims about testing or sanitary conditions, we don't think the

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1 Court needs to do a detailed examination of whether, for
2 example, keyboards are being cleaned. Mr. Commissiong is
3 speculating. These are some things that were not in his
4 submission. We can't on the spot confirm whether particular
5 steps are being taken, although we are certain that the BOP
6 with the resources they have are doing everything they can to
7 protect the inmates that are in their care, and we have laid
8 out in our letter the various steps that have been taken by the
9 BOP, both at the MCC specifically and more generally.

10 I will note that the testing regime that Mr.
11 Commissiong describes, assuming it's true, is the same for
12 individuals not in a prison setting, which is it is unusual or
13 not permitted, as far as we understand it, at this point, given
14 the limited number of tests, for individuals who are not
15 symptomatic to be tested for COVID-19.

16 I will briefly address the Sixth Amendment
17 allegations. I want to note that it is the government's
18 understanding, and the Court may be aware of this, that the
19 court is working with both the MCC and the MDC in order to
20 create a system which should be coming online fairly soon by
21 which the court will be able to have proceedings by
22 videoconference with the detained individuals, probably in the
23 mornings, and then in the afternoons there will be access for
24 the inmates to have calls with counsel or similar contacts that
25 they need in order to make sure they are prepared for any

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1 proceedings that might be coming up or other litigation-related
2 conversations that need to happen.

3 The government's understanding is that the MCC
4 specifically is actually receiving an influx of additional
5 staff today from another facility so that they can make sure
6 they are meeting the demands specifically related to contact
7 with counsel because they have recognized that it's been
8 difficult over the last week or two to make sure there are
9 sufficient staff to accompany inmates from their cells to the
10 locations where legal calls can be made.

11 These are unusual times where BOP and the rest of us
12 are facing extraordinary challenges. There is no indication
13 that BOP and MCC are not working diligently to make sure that
14 they are providing for the inmates that they have. Things are
15 not perfect right now, and we don't contend otherwise, but it
16 is difficult to see how a couple of weeks of limited
17 communication between Mr. Limberatos and his counsel in this
18 particular case, given the timeline, meaningfully infringes on
19 any right he may have, although, of course, the government
20 would prefer that he has open access to his attorney.

21 I would note that there are a couple of things that I
22 think the defense has taken no issue with, which is Mr.
23 Limberatos is not similarly situated to the other cases that he
24 identified in his opening filing. We drew out some of the
25 distinguishing factors, for example, with the *Stephens* case,

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1 the *Hudson* case, the *Doran Santiago Reyes* case. Of course,
2 every bail determination is individualized and each person in
3 each case is different, but to the extent the Court is looking
4 to see what other judges have done in the recent days, we don't
5 see a case similar to this one where a defendant who, in the
6 MCC's view and in the government's view, is not in a high-risk
7 category was released, especially where he is an extraordinary
8 risk of flight.

9 The government is available to answer any questions
10 the Court may have, and we appreciate the opportunity to
11 address the Court.

12 THE COURT: Thank you. I would just ask that you
13 elaborate further, if possible, and in any event reiterate
14 clearly for the record, your position as to the significance in
15 connection with risk of flight of Mr. Limberatos's proffer of a
16 waiver of extradition.

17 MR. SOBELMAN: Yes, your Honor. We have addressed
18 this in our letter, but I will explain it briefly on the record
19 now.

20 THE COURT: You did address it in your letter. You
21 made a general statement in your letter that you have never
22 heard of one of these holding up. If you have anything more to
23 add to that or contextualize that, I would be grateful.

24 MR. SOBELMAN: Understood, your Honor.

25 We consulted with the Office of International Affairs,

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1 which is located at Main Justice in Washington, D.C., and they
2 are really the department's experts on these type of issues.
3 And they are not aware of any country in which such a waiver
4 would be considered binding, meaning that it might be a factor
5 that a country took into account when they decide whether to
6 grant or deny extradition, but there are a number of different
7 arguments that would be available to the defendant even if he
8 had signed such a waiver.

9 So, for example, the government's understanding is
10 that defendants in other cases have been successful in fleeing
11 and then arguing in the jurisdiction to which they have fled,
12 and then the government has sought extradition, to be able to
13 argue, well, I signed it under duress because I wanted to not
14 be in prison in the United States, or the prosecution somehow
15 had a political flavor, a variety of arguments one could
16 imagine, and that a foreign government would decide that indeed
17 it was not knowing and voluntary. And depending on the
18 country, it really does vary country by country, such waivers
19 might not even be considered valid at all, meaning that there
20 are certain countries where extradition essentially is
21 non-waiveable and one has to go through a protocol that is set
22 forth, but there are literally dozens of regimes.

23 But I can say that we consulted the Office of
24 International Affairs, and their staff is not aware of any
25 country that would consider such a waiver binding; that it

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1 might be a factor that could be considered depending on the
2 country or might not be considered depending on the country,
3 but that it would not be binding, in the sense that as long as
4 Mr. Limberatos signed it now, wherever he went, we could easily
5 get him back if we were to locate him. That is just simply
6 fiction and there are a number of cases that reference that
7 fact.

8 THE COURT: Do you have any specific information about
9 Greece?

10 MR. SOBELMAN: I don't, your Honor. We weren't able
11 to get any specific information about Greece. If the Court
12 wishes, we can follow up and attempt to do so. But given the
13 blanket sort of categorical view of the Office of International
14 Affairs that there is no country that would necessarily honor
15 such a waiver, we didn't think it necessary. In addition I
16 will note, as your Honor I am sure recalls from the earlier set
17 of hearings and briefings, Greece is under no obligation to
18 extradite its own citizens to the United States, and we are not
19 aware that this waiver would have any bearing.

20 THE COURT: One moment.

21 Ms. Giniger, are you still on the line?

22 THE REPORTER: Yes.

23 THE COURT: Mr. Commissiong, are you still on the
24 line?

25 MR. COMMISSIONG: I am still here, your Honor.

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1 THE COURT: It sounds like we have key players.

2 Ms. Harmon, are you still on the line?

3 MS. HARMON: Yes, your Honor.

4 THE COURT: Mr. Sobelman, would you continue, please.

5 MR. SOBELMAN: I will simply say if the Court wishes
6 for us to try to obtain additional information, if it exists,
7 with respect to Greece's view on such a waiver, we can do so,
8 although, again, our understanding is that no country would
9 find it binding, and in any event, the United States government
10 would never be able to even request extradition of Mr.
11 Limberatos because of Greece's view they do not extradite their
12 own citizens pursuant to the terms of the treaty.

13 THE COURT: Thank you. I am not making that request
14 at this point.

15 MR. COMMISSIONG: Pardon me, your Honor?

16 THE COURT: I am not making that request of you at
17 this point.

18 MR. COMMISSIONG: I wanted to briefly respond, if your
19 Honor would allow me.

20 THE COURT: I'm sorry, Mr. Commissiong. I didn't
21 realize that was your voice. I was just responding to Mr.
22 Sobelman's offer, and I thought he had asked me a question.

23 If you will bear with me for a moment, Mr.
24 Commissiong, I just want to ask Officer Harmon, on behalf of
25 pretrial services, if she wanted to say anything at this point.

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1 MS. HARMON: Your Honor, I don't have anything to add,
2 unless you have any questions for me.

3 THE COURT: No, I don't, but I wanted to make sure I
4 gave you the opportunity. Thank you.

5 Mr. Commissiong.

6 MR. COMMISSIONG: Yes. Your Honor, I wanted to just
7 address a couple of points that the government made.

8 First, what does flight mean in this case at this
9 particular juncture? If Mr. Limberatos were to flee to Greece,
10 what would he be fleeing to? He would be fleeing from one
11 epicenter of this epidemic to another epicenter of this
12 epidemic, and he at worst would have to travel through a number
13 of countries that all have certain travel restrictions. My
14 understanding is that from March 18 through April 18,
15 non-European Union citizens are barred from entering Greece;
16 transiting travelers, government delegation members, long-term
17 residents and spouses and minor children that are European
18 Union nationals are still permitted entry.

19 THE COURT: But he is a Greece national, correct?

20 MR. COMMISSIONG: He is a Greek national.

21 THE COURT: So they let their own nationals back in?

22 MR. COMMISSIONG: Well, will they let this particular
23 national back in? I don't know, simply because travel
24 restrictions, based on how the epidemic is moving, are changing
25 daily. The only person that he has in Greece is a 99-year-old

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1 mother. So now, do we believe that Mr. Limberatos would leave
2 New York while this case is pending to go to Greece to
3 possibly -- travel on a plane, maybe traveling through a number
4 of countries, to possibly put his 99-year-old mother at risk?
5 I think that that's a question that we have got to consider.
6 And in terms of figuring out, well, what does flight mean in
7 this particular circumstance, do we believe that Mr.
8 Limberatos, under these circumstances, in this particular case,
9 as the case stands now, do we believe that he is a serious risk
10 of flight to the extent that flight means what I just
11 described?

12 The government stated that testing at BOP facilities
13 is the same as testing in the general public, but BOP
14 facilities are not the same as the general public. BOP
15 facilities are under the specific control of the federal
16 government, the federal government that has access to tests,
17 the federal government that runs facilities that are
18 particularly susceptible to extensive transmission of the
19 virus. If the government says that through April 30 the public
20 in general should practice social distancing, that there is a
21 recommendation that people should wear masks, and the cramped
22 spaces of the Bureau of Prisons aren't a place where you can
23 social distance really with anyone, the crowded spaces of the
24 BOP, its staff haven't provided gloves or masks to their
25 inmates, then we are looking at a place that, contrary to the

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1 government's assertions, is susceptible, Mr. Limberatos being
2 over 50 is at a higher likelihood of contracting the disease,
3 and if he gets the disease, of dying, your Honor.

4 The government made some comments regarding additional
5 staff coming in to help field calls from counsel. Additional
6 staff came in to the MCC shortly after Mr. Epstein's suicide.
7 That happened, to my understanding, because of staff shortages
8 prior to his suicide. That staff remained there for just a few
9 weeks, and for a period of from January to about the time MCC
10 locked down because there was a weapon at the facility, the
11 wait times to see your client in person were inordinately long.
12 And that was because that staff couldn't stay for more than a
13 few weeks, on information and belief they couldn't stay for
14 more than a few weeks.

15 When the lockdown occurred in connection with the
16 firearm, counsel couldn't meet with defendants. There was
17 limited access between the end of that lockdown and the
18 beginning of the March 13 lockdown in connection with the
19 coronavirus. So when the government says that a couple of
20 weeks of limited access won't hurt, well, if you extend it back
21 to the lockdown in connection with the firearm, this is more
22 than a couple of weeks. To say that it's just going to be a
23 couple of weeks, we don't know from day to day how this is
24 going to turn out. And to assume, based on the BOP's record,
25 based on the MCC's record, that it's just going to be a couple

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1 of weeks, to me, that just doesn't make sense given these
2 circumstances.

3 I would also add that in terms of unsanitary
4 conditions and me sort of speculating, there has been for years
5 sentencing memoranda upon sentencing memoranda submitted by
6 defense counsel regarding infestation of mice and roaches at
7 the MCC and MDC. I think as recent as November or December, in
8 the women's unit at the MCC, there was flooding; there was
9 flooding and the staff at MCC made the inmates clean up the
10 flooding. Mold grew as a result of the flooding. Those
11 unsanitary conditions are a fact; they are not speculation. At
12 MDC, we know last February there was a small fire that
13 generated a lack of heat and hot water at that facility. These
14 unsanitary conditions are not speculation, they are fact. And
15 as a defense attorney who goes to these facilities, who has to
16 see clients in these facilities, I have seen corrections
17 officers with their own personal -- during good times -- with
18 their own personal bottle of hand sanitizer. I myself wash my
19 hands right after I leave these facilities. I have seen
20 unsanitary conditions in the bathroom, sometimes in the
21 visiting rooms --

22 THE COURT: Mr. Commissiong.

23 MR. COMMISSIONG: Yes, your Honor.

24 THE COURT: I take your point and I am aware of the
25 long-term complaints of systemic problems. And I don't say

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1 that those complaints are not insignificant. They are
2 complaints that any of the 22 or 2300 people in these
3 facilities could make at this point, and they are institutional
4 systemic issues, and they go into the mix of whether there are
5 compelling circumstances here with respect to Mr. Limberatos.
6 And so that's a long-winded way of saying I take your point
7 about the general baseline level of sanitation being, as you
8 say, bad. So you can go on.

9 MR. COMMISSIONG: No, your Honor. You were not
10 long-winded. I think I was being long-winded and my apologies.
11 And that's all I have for now, your Honor.

12 THE COURT: Thank you.

13 Anything further, Mr. Sobelman?

14 MR. SOBELMAN: No, your Honor, unless there is
15 something specific that you would like us to address.

16 THE COURT: Do you know anything about travel
17 restrictions that would legally prohibit Mr. Limberatos from
18 entering Greece?

19 MR. SOBELMAN: No, your Honor, we don't. It sounds
20 like from what Mr. Commissiong said, and I think your Honor
21 pointed out, Mr. Limberatos as a citizen would, of course, be
22 permitted to enter his country. I don't know if he would have
23 some kind of quarantine requirement upon entering.

24 I would also note, in terms of Greece being, quote
25 unquote, an epicenter of the COVID-19 outbreak, it does not

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1 bear out in the numbers. There are a total of 1800,
2 approximately, confirmed cases in Greece according to the
3 research I have conducted. They have approximately 180 cases
4 per million citizens, as where the United States has about 1200
5 cases per million citizens.

6 Again, we really don't think it is necessary to create
7 a serious draw for the defendant to want to be there, given the
8 enormity of the sentence that he faces, the strength of the
9 evidence, and the other reasons that we set forth in prior
10 proceedings and this one that we think he is a substantial risk
11 of flight, but to the extent the Court is considering the state
12 of play in Greece with respect to COVID-19, we would just note
13 those statistics.

14 THE COURT: Thank you.

15 Counsel, I have listened very carefully to everything
16 that has been said here today, and I have read very carefully
17 all of the prehearing submissions.

18 To the extent that Mr. Limberatos seeks general
19 reopening of the detention hearing pursuant to Title 18,
20 Section 3142(f) and reversal of the Court's prior determination
21 that no condition or combination of conditions can provide
22 adequate protection against the risk of flight, Mr. Limberatos
23 has the burden of demonstrating that there is new information
24 that has a material bearing on the issue of whether there are
25 conditions of release that will reasonably assure Mr.

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1 Limberatos's appearance as required. See Section 3142(f).
2 Protection of the public was not an issue in the Court's prior
3 detention determination and is not argued here. Under Section
4 3142(f), Mr. Limberatos has the burden of showing that there
5 are new facts that are material to the risks that are the focus
6 of the bail statute -- risk of flight and risk of danger to the
7 community.

8 Section 3142(i) provides that, where a detention order
9 has been previously issued under Section 3142(e), a judicial
10 officer may, by subsequent order, permit the temporary release
11 of the person in the custody of a United States marshal or
12 other appropriate person to the extent that the judicial
13 officer determines such release to be necessary for preparation
14 of the person's defense or for another compelling reason. Mr.
15 Limberatos has the burden of showing that temporary release is
16 warranted under Section 3142(i).

17 In October, the Court found that Mr. Limberatos
18 presented a risk of flight against which no condition or
19 combination of conditions could provide appropriate protection.
20 This remains and is neither negated nor overcome by the health
21 risks that COVID-19 admittedly creates for all members of our
22 society, and especially for those detained in close quarters.
23 The operation of our criminal justice system and the rule of
24 law depend on successful management of personal and public
25 risks both in ordinary times and in times like these of

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1 emergency. Mr. Limberatos has failed to demonstrate in this
2 application that there are conditions that can reasonably
3 protect against the risk of flight presented by his Greek
4 citizenship, the extradition policies of that country, and
5 evidence of his access to financial resources and false
6 identity documents, among other factors.

7 The Court has previously found that supervision and
8 security bonds are insufficient to provide such protection, and
9 the defendant's proffers of an extradition waiver that is
10 likely unenforceable, a security package of higher monetary
11 value, and acceptance of home detention are insufficient to
12 mitigate the substantial risk of flight. The Court
13 acknowledges that flight in this time of the COVID-19 pandemic
14 would itself present additional infection risks to Mr.
15 Limberatos, but as between the potential consequences of a
16 conviction and imposition of a penalty in this case and the
17 possibility of being able to reach Greece and be insulated from
18 those sorts of potential penalties, the Court is not persuaded
19 that it is unlikely that a rational person might take that
20 travel risk.

21 The ability of the Court to provide supervision is
22 particularly challenged due to the public health emergency. No
23 one in this city or country has absolute protection from the
24 risk of contracting this terrible disease while enforcement
25 officers and court supervision personnel are subjected to

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1 exposure risks as they go about their public duties, and of
2 course medical personnel are literally on the front lines. The
3 Court does not take lightly the higher risk of exposure to the
4 disease present within the MCC than in a location in which the
5 person could be effectively and entirely separated from other
6 people or have access to the most effective cleaning products.
7 The BOP has, however, implemented policies and consulted with
8 appropriate experts to develop and implement strategies to
9 mitigate the risks posed by COVID-19 insofar as possible in the
10 context of its facilities' resources and mission. The BOP's
11 mitigation measures do not and cannot eliminate completely the
12 risk of COVID-19, but these measures are calculated to mitigate
13 the risk of infection in its inherently close quarters for all
14 persons in custody and for BOP staff.

15 Although in certain cases the specific medical
16 conditions of individual pretrial detainees may create risks so
17 substantial that they reduce or outweigh the risk of flight
18 posed by temporary release of such detainees, the Court finds
19 that in Mr. Limberatos's case, particularly given the Greek
20 extradition policies, the risk of flight presented by his
21 release outweighs the risk of exposure to COVID-19 that he
22 faces in detention, particularly where Mr. Limberatos is well
23 under the age of 65, although the Court accepts that other
24 public health authorities, including New York City, have
25 indicated that there is at least some elevated risk over the

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1 age of 50. Mr. Limberatos also has not demonstrated that his
2 medical or physical condition makes him significantly more
3 vulnerable to the disease than other detainees. Nor has Mr.
4 Limberatos shown that he is subject to a particular threat to
5 his ability ultimately to defend his case.

6 Therefore, the Court concludes that the COVID-19
7 pandemic does not present new facts material to Mr.
8 Limberatos's risk of flight under Section 3142(f) or a
9 compelling reason under Section 3142(i) sufficient to justify
10 his temporary release. The constitutional objection that Mr.
11 Limberatos has raised to his continued detention is also
12 insufficient to meet the statutory standard as well as the
13 constitutional standard.

14 The next status conference in this case has been
15 adjourned in light of the current public health crisis and no
16 substantive proceedings are imminent. And while the BOP has
17 temporarily barred legal visits at the MCC, telephone
18 privileges have been increased in light of the visiting
19 restrictions and the BOP and the Court are working on putting
20 in place facilities for video and teleconferencing with
21 counsel. The government has proffered that the BOP will
22 continue to permit teleconferencing with counsel and access to
23 programs and services as permitted by the mitigation measures
24 being taken which include the 14-day medical quarantine of
25 detainees.

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1 This is a fluid and evolving situation. This is
2 clearly a situation in which the early development of defense
3 strategies and attorney-client relationships is affected in a
4 negative manner by the restrictions that have been put in place
5 in response to the unprecedented, in our lifetimes, pandemic
6 conditions here in the city and worldwide, but at all levels of
7 government and society work is being done to mitigate the risks
8 and return to a more open and more accessible life for all.
9 And so in these emergency conditions, and given the relatively
10 limited period of time that these conditions are expected to
11 last, and the early stage of this case, the Court finds that
12 the current situation does not present a Sixth Amendment
13 violation or a compelling need for release to enable Mr.
14 Limberatos to prepare his defense. Accordingly, Mr.
15 Limberatos's application for release is denied and the Court
16 will enter an order accordingly.

17 Mr. Commissiong, will you describe today's proceedings
18 to the defendant as soon as you can?

19 MR. COMMISSIONG: Yes, I will do that, your Honor.

20 THE COURT: And will you also order and provide a copy
21 of the transcript of these proceedings to Mr. Limberatos? Of
22 course, I will sign off on the authorization for that.

23 MR. COMMISSIONG: Yes. Absolutely, your Honor.

24 THE COURT: Thank you.

25 Counsel, I thank you for your advocacy and the level

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1 of seriousness with which you have both taken the issues
2 presented today and the questions of Mr. Limberatos's welfare.

3 MR. COMMISSIONG: Thank you, your Honor.

4 THE COURT: Is there anything else that we need to
5 take up together this afternoon?

6 MR. SOBELMAN: Nothing from the government.

7 MR. COMMISSIONG: Nothing from the defense, your
8 Honor.

9 THE COURT: Thank you, everyone. Keep safe and stay
10 well.

11 Thank you. We are adjourned.

12 (Adjourned)